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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

Arizona Corporation Commission

DOCKETED

AUG 15 2014

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2014 AUG 15 A 11: 24

AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF
ARIZONA WATER COMPANY FOR AN
EXTENSION OF THE SERVICE AREA
UNDER ITS EXISTING CERTIFICATE OF
CONVENIENCE AND NECESSITY TO
PROVIDE WATER UTILITY SERVICES

DOCKET NO. W-01445A-03-0559

**STAFF'S RESPONSE TO ARIZONA
WATER COMPANY'S MOTION TO
STRIKE PRE-FILED REBUTTAL
TESTIMONY OF ERNEST G.
JOHNSON AND TO PRECLUDE
HIS TESTIMONY AT HEARING**

On July 18, 2014, Cornman Tweedy 560 LLC ("Cornman Tweedy") filed the pre-filed rebuttal testimony of Steven Soriano, Ernest G. Johnson, and Fred Goldman. On July 29, 2014, Arizona Water Company ("AWC" or "Company") filed a motion to strike the pre-filed rebuttal testimony of Mr. Johnson and to preclude his testimony at hearing. The basis for AWC's motion is that owing to Mr. Johnson's prior employment as the Director of the Arizona Corporation Commission's ("Commission") Utilities Division and later as Executive Director of the Commission, Mr. Johnson is precluded from participation in the proceeding.

On August 11, 2014, the Company supplemented its motion to strike in light of testimony elicited from Mr. Johnson at a deposition conducted on August 7, 2014. According to the supplement to AWC's motion, Mr. Johnson stated in deposition that he neither sought nor obtained written authorization from the Commission to appear as a witness in the above captioned proceeding. Further, the Company's supplement to its motion cites Arizona Administrative Code Rule R14-3-104 which states:

(G) Former employees. No former employee of the Commission shall appear at any time after severing his employment with the Commission as a witness on behalf of other parties in a formal proceeding wherein he previously took an active part in the investigation or preparation as a representative of the Commission, except with the written permission of the Commission.

1 On August 12, 2014, a procedural order was filed in this matter directing Commission
2 Utilities Division Staff ("Staff") to file a response to the Company's motion. Staff hereby provides its
3 response to the motion.

4 At the outset, Staff would observe that although AWC has not explicitly stated it, the cited
5 authority it provides in support of its motion is a conflict of interest provision. In addition to the
6 provisions of A.A.C. R14-3-104(G), Arizona Revised Statutes §38-504 provides in pertinent part:

7 A. A public officer or employee shall not represent another person for
8 compensation before a public agency by which the officer or employee is or was
9 employed within the preceding twelve months or on which the officer or employee
10 serves or served within the preceding twelve months concerning any matter with
which the officer or employee was directly concerned and in which the officer or
employee personally participated during the officer's or employee's employment or
service by a substantial and material exercise of administrative discretion.

11 Staff notes that while A.A.C. R14-3-104(G) does not place a time limit on the applicability of the
12 provision, both A.A.C. R14-3-104(G) and A.R.S. § 38-504(A) provide that the employee's
13 participation must be active or direct and substantial.

14 The Arizona Attorney General's Agency Handbook provides additional guidance on the issue
15 of former employees representing clients before the agency that previously employed them. Per the
16 Agency Handbook at 8.11 "Representation of Others After Leaving Public Service",

17 State law also places restrictions on representation of others when a public officer or
18 employee departs from state service. In particular, A.R.S. § 38-504(A) provides:

19 A public officer or employee shall not represent another person for compensation
20 before a public agency by which the officer or employee is or was employed within
21 the preceding twelve months or on which the officer or employee serves or served
22 within the preceding twelve months concerning any matter with which such officer or
employee was directly concerned and in which the officer or employee personally
participated during the officer's or employee's employment or service by a substantial
and material exercise of administrative discretion.

23 For example, a Corporation Commission employee who was materially involved in a
24 utility rate hearing involving a public service corporation may not represent that
corporation before the Commission for one year after the employee has resigned from
state service.

25 In the example provided by the Attorney General to provide guidance to state employees, there is
26 likewise a materiality component to the analysis of whether a former employee may represent a client
27 before the Commission.

1 At this time, Staff is not in a position to evaluate the materiality of Mr. Johnson's participation
2 in this matter prior to his departure from Commission employment. Staff notes that AWC's motion
3 and supplement to motion do not provide information speaking to the materiality element. Absent
4 additional information regarding the materiality of Mr. Johnson's involvement in this proceeding,
5 Staff believes that the Company has not fully expressed all the necessary elements to support its
6 motion.

7 RESPECTFULLY SUBMITTED this 15th day of August, 2014.

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